

1 **ANDREW CAMERON BAILEY**
 2 **CONSTANCE BAXTER MARLOW**
 3 153 Western Avenue
 Glendale, CA 91201

4 Phone: (928) 451-2043
 5 Email: andrew@cameronbaxter.net

6 *Plaintiffs in pro per*

7 **IN THE UNITED STATES DISTRICT COURT**
 8 **CENTRAL DISTRICT OF CALIFORNIA**

10 **ANDREW CAMERON BAILEY**
 11 **CONSTANCE BAXTER MARLOW**

12 **Plaintiffs**

13 Vs

14 **U.S. BANK NA AS TRUSTEE FOR**
 15 **WFMBS 2006-AR2; WELLS FARGO**
 16 **BANK NA; WELLS FARGO HOME**
 17 **MORTGAGE; WELLS FARGO ASSET**
 18 **SECURITIES CORPORATION; and all**
 19 **persons claiming by, through, or under such**
 20 **person, all persons unknown, claiming any**
 21 **legal or equitable right, title, estate, lien, or**
 22 **interest in the property described in the**
 23 **complaint adverse to Plaintiffs' title thereto;**
 24 **and JOHN DOES "1-10" inclusive,**

25 **Defendants**

CASE NO: CV11-3227 GW (CWx)
 Hon. George H. Wu
 Courtroom 10 - Spring Street.

OBJECTION TO DEFENDANTS'
EXHIBITS, SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
PLAINTIFFS' COMPLAINT,
OBJECTION TO DECLARATION OF
JARLATH M. CURRAN II.

22 Plaintiffs Andrew Cameron Bailey and Constance Baxter Marlow Object to each and all of
 23 the Documents and Exhibits filed by the Defendants in this matter, for the reasons and
 24 grounds set forth below. Further, Plaintiffs ask the Court to note that despite judicial notice
 25 requested of the several hundred pages of exhibits thus far submitted by the Defendants,

FILED
 2011 JUN 23 AM 11:32
 CLERK, U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIF.
 LOS ANGELES

ORIGINAL

1 judicial notice does not mean that the contents of the exhibits shall be taken by this Court as
2 authentic, true or effective. Plaintiffs ask the Court to note that Defendants have failed to
3 provide any admissible documentation that supports their position that they are a holder in
4 due course or a real party in interest. Plaintiffs object to the declaration of Jarlath M. Curran
5 II as set forth below.

6 **Supplemental Memorandum and Argument**

7 1. Plaintiffs executed a purported mortgage loan transaction (the "loan") on or about
8 November 17, 2005 with Defendant Wells Fargo Bank, NA (WFB) an entity that Plaintiffs
9 believed in good faith to be the actual lender in a conventional loan transaction. Plaintiffs
10 have now learned the truth, that WFB was not the lender, but was in fact the sponsor in a
11 securities investment scheme among undisclosed parties. WFB did not fund the "loan." The
12 lender and funder of the "loan" was an undisclosed and as-yet-unidentified investor in
13 mortgage-backed securities. The transaction was not a loan transaction, it was an unlawful
14 and undisclosed conversion to a securities investment offering.

15 2. It is undisputed that Plaintiffs' "loan" was securitized, a fact with profound consequences
16 upon the nature and effect of the transaction and the ownership of the Note and the security
17 instrument. The fact of the securitization was initially withheld from the borrower and the
18 courts.

19 3. On information and belief, however, the alleged securitization was never properly carried
20 out, as evidenced by the Defendants' own exhibits. The chain of title is broken and the
21 record is devoid of any documentary or declaratory evidence that Defendants complied with
22 the terms of their own Trust Agreements and with the New York Trust Law governing
23 those agreements.

24
25 4. The "loan" transaction is governed by basic contract law:

1 a. The securitization scheme involved a pre-existing agreement that the Plaintiffs
2 (the alleged borrower) were not a party to, which denied them the opportunity to negotiate,
3 and subjected them to a higher cost of the "loan" because there were undisclosed parties
4 involved.

5 b. The entity advertising itself as the "lender", WFB, borrowed to obtain funds to
6 "loan" to Plaintiffs.

7 c. The funds were obtained by the sale of the alleged borrower's promissory note.
8 "Promises to pay" are "credit instruments." When a bank or financial institution gives a
9 "loan" they are giving "credit" or "credit instruments", not lawful money. It is an exchange.
10 Therefore there was no consideration, and the alleged borrower's note was taken, converted
11 (civil theft), sold, and the proceeds returned to the alleged borrower in the form (not
12 substance) of a loan,

13 d. When the note was taken it was then supposed to be deposited into a trust and
14 used with others for the benefit of unknown and undisclosed investors (indispensable
15 parties - the real parties in interest).

16
17 5. There are only two real parties in interest, the investors in the mortgage-backed securities
18 and the Plaintiffs. Obviously, there is no contract between the real parties in interest. None
19 of the foregoing was authorized by or disclosed to the real parties in interest and constitutes
20 fraudulent misrepresentation. There was no meeting of the minds, a mandatory requirement
21 for a valid contract. No meeting of the minds makes the purported agreement void, not
22 voidable.

23
24 6. Plaintiffs allege that the real transaction between the borrower and the lender is
25 undocumented, and that the parties at closing used WFB as a paid straw man instead of the

1 real lender. The parties then used documents from the straw man to give credence to the
2 appearance that the closing documents actually described the transaction when in fact they
3 did not.

4
5 7. Plaintiffs deny that a default has occurred, since, on information and belief, the servicer
6 is continuing payment to the real creditor/lender pursuant to the terms of the PSA and
7 Prospectus. Plaintiffs deny that they have defaulted on any valid loan obligation.

8
9 8. Plaintiffs deny the authority of the foreclosing parties to declare a default, and deny the
10 authority of the foreclosing parties to initiate sale under the power of sale both because the
11 documents showing the authority are absent and because the mortgage itself is defective in
12 that it was procured through fraud in the inducement, and is defective in that it purports to
13 create a security interest in a debt that is denied.

14
15 9. Plaintiffs allege that they have equity in the property. If the mortgage is not a valid lien,
16 and the trustee's sale was defective and void, the equity is there.

17
18 10. Plaintiffs allege that the burden of proof is upon the Defendants to prove that the
19 mortgage is valid or enforceable.

20
21 11. Plaintiffs allege waiver and abandonment of claim as an affirmative defense because the
22 real creditor-lender has opted not to enforce any claim, equitable or legal, against them.

23
24 12. Plaintiffs allege that Defendants' own exhibits show that Defendants failed to comply
25 with the terms of their own governing agreements, (the PSA, Prospectus, etc), New York
trust law, and the IRS Code. Consequently all of the documents and exhibits created and

1 filed by them are false and misleading and without force or effect.
2

3 **Plaintiffs' Objection to Defendants' Exhibits**
4

5 13. Attorney's arguments or statements are not evidence. Defendants' motions argue and
6 assume facts which are not in evidence or are in dispute.
7

8 14. No evidence has been presented that Defendants are in possession of, are the holder of,
9 or are the agent for the holder of the alleged obligation in the record. If Defendants claim
10 such evidence exists, Plaintiffs demand a show of proof for the record.
11

12 15. All of the exhibits and documents have been submitted and presented by Defendants'
13 attorneys, and not by a person with personal knowledge of the authenticity of the
14 documents. The exhibits and documents are inadmissible hearsay.
15

16 16. All of the exhibits and documents are uncertified and have been submitted without
17 any compliance with the rules of evidence, as Defendants provide no declaration
18 authenticating any of the documents. There is no certification from an employee of any
19 Defendant entity that such party works for the entity and has been delegated the authority of
20 "custodian" of records. There is no certification that they have those documents in their
21 "custody," or that they have personal first-hand knowledge of the information contained
22 within them, who executed them, who delivered them, and who transferred them.
23

24 17. Plaintiffs once again object to the Limited Power Of Attorney (LPOA) dated December
25 11, 2008 upon which the bankruptcy court relied in lifting the automatic stay. The LPOA
was issued by US BANK NA forty seven days before the January 27, 2009 Assignment of
the Deed of Trust to US BANK NA and consequently had no authority to confer. A close

1 reading of the LPOA reveals that the language neither asserts nor confers any authority
2 whatsoever. The LPOA is a false and misleading document. (See Exhibits "A" and "B")

3 18. During Plaintiff Bailey's bankruptcy proceedings, Defendant WFB falsely asserted that
4 it was the owner and holder of the note, an impossible statement in view of the
5 securitization of the "loan", which required the sale and transfer of the "loan" to the Trust
6 on or prior to February 26, 2006. On information and belief, WFB was merely the servicer
7 of the "loan" at the time it filed its motion for relief from the automatic stay. When
8 challenged, WFB admitted that its assertion was false, but stated that this was "a fact of no
9 consequence", because it could now provide the bankruptcy court with a LPOA from US
10 Bank, NA, who was (allegedly) the real holder and owner of the Note. As set forth above,
11 the LPOA was issued some 47 days prior to the Assignment of Deed of Trust to US Bank,
12 NA. The LPOA is thus a false, misleading and defective document and confers no power or
13 authority upon WFB.

14 19. Plaintiffs deny the authenticity, authority and effectiveness of the closing documents in
15 the "loan" transaction since they describe a transaction that did not occur:

16 a. As this was a table-funded transaction among undisclosed parties, the real lender
17 was concealed so the lender was improperly identified. WFB, the sponsor of the securities
18 scheme, and later the "loan servicer", was falsely and misleadingly named as the "lender" in
19 the closing documents.

20 b. The "loan" was securitized so the terms of the transaction are not properly alleged
21 by Defendants unless the allegations show both the homeowner's closing documents and the
22 documents relied upon by the investors (prospectus, PSA etc.)

23 20. Plaintiffs deny the alleged Promissory Note, since it is not evidence of the actual
24 transaction between the parties.

25 21. Further, the copy of the alleged Note provided by Defendants as a true and correct copy

1 cannot be authentic because it carries none of the endorsements required by the trust
2 agreements. Plaintiffs accordingly object to the copy of the Note.

3
4 22. Plaintiffs never received an executed copy of the alleged promissory note or agreement
5 which Defendants claim possesses their bona fide signature. California Uniform
6 Commercial Code section 3308 states that the burden of proof of establishing validity is on
7 the person claiming validity. See California Commercial Code section 3308
8 <[http://www.leginfo.ca.gov/cgi-bin/displaycode?section=com&group=03001-](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=com&group=03001-04000&file=3301-3312)
9 [04000&file=3301-3312](http://www.leginfo.ca.gov/cgi-bin/displaycode?section=com&group=03001-04000&file=3301-3312)>.

10 23. Plaintiffs deny the Deed of Trust or mortgage deed, since it purports to secure a
11 defective Note.

12 24. Plaintiffs deny the Notice of Substitution of Trustee since it is based upon false
13 documentation and authority.

14
15 25. Plaintiffs deny the Notice of Default since it is based upon false documentation and
16 authority.

17
18 26. Plaintiffs deny the Notice of Trustee's Sale since it is based upon false documentation
19 and authority.

20 27. Plaintiffs deny the validity of the Trustee's Sale since it was based upon false
21 documentation and authority.

22
23 28. Plaintiffs deny the Trustee's Deed upon Sale since it is based upon false documentation
24 and authority.

1 **Objection to Declaration of Jarlath M. Curran II.**

2
3 29. Plaintiffs object to the Declaration of Jarlath M. Curran II, which states that the
4 Defendants' legal costs in the instant litigation will be in the region of \$75,000.

5
6 30. The instant litigation could be resolved with a minimum of time and expense if
7 the Defendants would simply produce admissible authentic documents and
8 declarations that establish their foundation, to wit, the Trust Agreements, the
9 Promissory Note with all necessary endorsements showing that the "loan" was timely
10 and properly placed into the Trust, and the Custodian's certificate or receipt
11 certifying to the foregoing, all of which are presumably contained in the Plaintiffs'
12 custodial file which remains in the sole possession and custody of the Defendants.

13 31. Any other action on the part of Defendants is dilatory and wasteful of the Court's
14 time. Defendants pleadings appear to be improper attempts at distracting the Court
15 from addressing the genuine issues of material fact raised by the Plaintiffs.


16 32. On information and belief, Defendants are not capable of proving their position,
17 in view of the broken chain of title and the complete absence of any documentary
18 evidence that they complied with the terms of their own Trust Agreement, New York
19 Trust Law and the Internal Revenue Code.

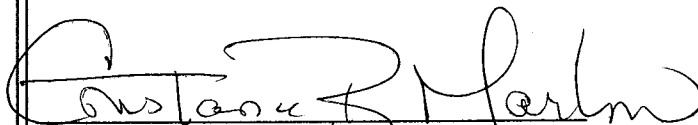
20 **Conclusion.**

21
22 Defendants have failed to show that they are holders in due course and real parties in
23 interest, but they are asking the Court to overlook and ignore the defects in their
24 documentation and the fact that they have failed to "observe the historic protocol."
25 Adams v. Madison Realty, 853 F.2d 163, 169 (3d Cir. 1988) "Financial institutions,
 noted for insisting on their customers' compliance with numerous ritualistic

1 formalities, are not sympathetic petitioners in urging relaxation of an elementary
2 business practice. It is a tenet of commercial law that 'holdership and the potential
3 for becoming holders in due course should only be accorded to transferees that
4 observe the historic protocol.'" The Court should not admit the foregoing documents
5 into evidence, and should order them purged from the record. The Court should
6 order the Defendants to produce the "collateral folder" containing Plaintiffs' loan,
7 along with certification that the contents have not been accessed or altered since the
8 closing of the Trust in February, 2006.

9 Respectfully submitted this June 23rd, 2011

10 
11
12 **Andrew C. Bailey, Plaintiff, Pro Se**

13
14 
15
16 **Constance B. Marlow, Plaintiff, Pro Se**

17
18 **Copy of the foregoing mailed on June 23, 2011 to:**

19
20 Jarlath M. Curran, II
21 Suzanne M. Hankins
22 Severson and Werson APC
23 19199 Von Karman Ave Ste 700
24 Irvine, CA 92612
25 Attorneys for Defendants

WHEN RECORDED MAIL TO:

LIMITED POWER OF ATTORNEY

U.S. Bank National Association ("U.S. Bank"), a national banking association organized and existing under the laws of the United States of America, 1 Federal St., Corporate Trust, 3rd Floor, Boston, MA 02110, hereby constitutes and appoints Wells Fargo Bank, N.A., successor by merger to Wells Fargo Home Mortgage, Inc. and in its name, aforesaid Attorney-In-Fact, by and through any officer appointed by the Board of Directors of Wells Fargo Bank, NA, to execute and acknowledge in writing or by facsimile stamp all documents customarily and reasonably necessary and appropriate for the tasks described in the items (1) through (4) below; provided however, that the documents described below may only be executed and delivered by such Attorneys-In-Fact if such documents are required or permitted under the terms of the related servicing agreements and no power is granted hereunder to take any action that would be adverse to the interests of the Trustee of the Holder. This Power of Attorney is being issued in connection with Wells Fargo Bank, N.A., successor by merger to Wells Fargo Home Mortgage, Inc.'s, responsibilities to service certain mortgage loans (the "Loans") held by U.S. Bank in its capacity as Trustee. These Loans are comprised of Mortgages, Deeds of Trust, Deeds to Secure Debt and other forms of Security instruments (collectively the "Security Instruments") and the Notes secured thereby.

1. Demand, sure for, recover, collect and receive each and every sum of money, debt, account and interest (which now is, or hereafter shall become due and payable) belonging to or claimed by U.S. Bank National Association, and to use or take any lawful means for recovery by legal process or otherwise.
2. Transact business of any kind regarding the Loans, and obtain an interest therein and/or building thereon, as U.S. Bank National Association's act and deed, to contact for, purchase, receive and take possession and evidence of title in and to the property and/or to secure payment of a promissory note or performance of any obligation or agreement.
3. Execute bonds, notes, mortgages, deeds of trust and other contracts, agreements and instruments regarding the Borrowers and/or the Property, including but not limited to the execution of releases,

EXHIBIT "A" Page 1.

satisfactions, assignments, and other instruments pertaining to mortgages or deeds of trust, and execution of deeds and associated instruments, if any, conveying the Property, in the interest of U.S. Bank National Association.

4. Endorse on behalf of the undersigned all checks, drafts and/or other negotiable instruments made payable to the undersigned.

Witness my hand and seal this 11th day of December, 2008.

mei-ye Huang
Witness: Marjorie Huang

[Signature]
Witness: Ana Wang

U.S. Bank National Association, as Trustee

By: [Signature]
James H. Byrnes, Vice President

By: [Signature]
Lorie October, Vice President

[Signature]
Attest: Paul J. Gobin,
Account Administrator

FOR CORPORATE ACKNOWLEDGMENT

State of Massachusetts

County of Suffolk

On this 11th day of December, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared James H. Byrnes and Lorie October personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons who executed the within instrument as Vice President and Vice President, respectively of U.S. Bank National Association, and known to me to be the person who executed the within instrument on behalf of the corporation therein named, and acknowledge to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its Board of Directors.

WITNESS my hand and official seal.

Signature: [Signature]
Catherine R. Brown

My commission expires: 07/11/2014

(SEAL)



EXHIBIT "A" Page 2.

153



Recording Requested By:
FIRST AMERICAN LOANSTAR TRUSTEE SERVICES

When Recorded Mail To:
FIRST AMERICAN LOANSTAR TRUSTEE SERVICES
P.O. BOX 961253
FT WORTH, TX 76161-0253

Space above this line for Recorder's use only

APN: 5626-005-004
TS No.: 20089070810770

Title Order No.: 3945036

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned corporation hereby grants, assigns, and transfers to:
US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR WFMBS 2006-AR2

all beneficial interest under that certain Deed of Trust dated: 11/16/2005 executed by
ANDREW CAMERON BAILEY CONSTANCE BAXTER MARLOW

Trustor(s), to FIDELITY NATIONAL TITLE INS CO, as Trustee, and recorded on 12/2/2005 as Instrument No. 05
2946072, in Book , Page in the office of the County Recorder of LOS ANGELES County, CALIFORNIA together
with the Promissory Note secured by said Deed of Trust and also all rights accrued or to accrue under said Deed of
Trust.

Dated: 1/27/09

WELLS FARGO BANK, N.A. BY FIRST AMERICAN
LOANSTAR TRUSTEE SERVICES, LLC, ITS ATTORNEY IN
FACT

By: Chet Sconyers, Certifying Officer

State of TEXAS

County of TARRANT

Shaunte D. Williams

Before me _____, on this day personally appeared,
Chet Sconyers, known to me to be the person whose name is subscribed to the
foregoing instrument and acknowledged to me that this person executed the same for the purposes and consideration
therein expressed.

Given under my hand and seal of office this 27 day of Jan, A.D. 2009

(Notary Seal)

Shaunte D. Williams

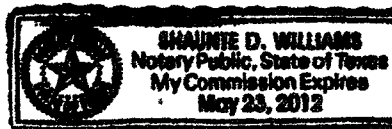


EXHIBIT "B"

21